

IN THE COURT OF APPEALS OF IOWA

No. 8-1070 / 08-1605
Filed January 22, 2009

**IN THE INTEREST OF W.H. and S.H.,
Minor Children,**

**S.A.H., Father,
Appellant.**

Appeal from the Iowa District Court for Linn County, Barbara H. Liesveld,
District Associate Judge.

A father appeals from the juvenile court order terminating his parental
rights. **AFFIRMED.**

Erek P. Sittig of Nidey Peterson Erdahl & Tindal, P.L.C., Cedar Rapids, for
appellant father.

Robert Davison, Cedar Rapids, for mother.

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Attorney General, Harold L. Denton, County Attorney, and Robert A. Hruska,
Assistant County Attorney, for appellee State.

Judith Jennings-Hoover, Cedar Rapids, for minor children.

Considered by Sackett, C.J., and Eisenhauer and Doyle, JJ.

DOYLE, J.

A father appeals from the juvenile court order terminating his parental rights to his children. He contends the juvenile court (1) improperly admitted hearsay testimony concerning the circumstances surrounding the birth of one child; (2) abused its discretion by denying his motions for a new trial and to amend and enlarge the court's termination ruling; and (3) erred in determining clear and convincing evidence established that termination was in the best interests of the children. Upon our de novo review, we affirm.

I. Background Facts and Proceedings.

S.A.H. is the father and A.C. is the mother of W.H., born in November 2003, and S.H., born in November 2005.¹ Both parents have a history of illegal substance abuse. The children came to the attention of the Iowa Department of Human Services (Department) in November 2005, after it was reported that S.H. tested positive for methamphetamine at birth. The children were temporarily removed from their parents' care and placed with their paternal grandparents. Shortly thereafter, the mother was offered placement in the Heart of Iowa treatment program, and the children were placed in their mother's custody under Department supervision.

The State subsequently filed a petition asserting the children were children in need of assistance (CINA). On December 27, 2005, following a stipulation by the parties, the juvenile court adjudicated the children CINA and continued their placement with their mother, contingent upon her participation in treatment. The

¹ This appeal concerns only S.A.H.'s parental rights. A.C. has not appealed from the termination of her parental rights.

court also ordered that the parents provide samples for urinalysis testing. A case permanency plan was developed to reunite the parents and the children, and multiple services were offered to the parents, including relative care, supervised visitation, supervision of services and parenting skill development by Family Systems and Four Oaks, services through the Iowa Department of Corrections, Grant Wood Area Education Agency services, Family Team Meetings, Linn County Public Health drug test samplings, remedial services for W.H., Area Substance Abuse Council services, AA/NA meetings, mental health evaluations and treatment, family counseling, anger management, and domestic violence counseling.

Both parents completed substance abuse treatment and appeared to be progressing towards reunification. However, both parents provided several samples for urinalysis that tested positive for illegal substances, and frequently did not provide samples at all. Additionally, on November 14, 2006, law enforcement responded to S.A.H.'s home where they allegedly found drug paraphernalia and a methamphetamine lab. S.A.H. had been badly beaten, and A.C. was arrested on drug charges. The children were present at the home at the time, and the children were subsequently removed from their mother's custody and placed in the care of their maternal grandparents.

The parents continued to receive services and began working once more towards reunification. Again, the parents provided some samples for urinalysis that tested positive for illegal substances. Thereafter, S.A.H. was sentenced to an indeterminate prison term not to exceed five years as a result of a number of incidents, including the November 14, 2006 incident. After procuring the State's

agreement, S.A.H. put off his prison term so he could enter a residential drug treatment program. Shortly after he completed the program, S.A.H. began his incarceration in September 2007.

On January 7, 2008, the State filed a petition to terminate the parents' parental rights. A termination hearing was held on May 27, 2008, and A.C. agreed to the termination of her parental rights, while S.A.H. contested the termination of his parental rights. Thereafter, in June 2008, extensive flooding in Cedar Rapids, Iowa, resulted in the loss of records at the Linn County Courthouse. Among the lost records were the entire court file and court reporter's notes relating to this termination hearing, as well as the original exhibits admitted at the hearing. A review hearing was set for August 18, 2008. At that hearing, the juvenile court informed the parties that it intended to rule on the State's petition. The court denied S.A.H.'s oral request for a new trial.

On August 21, 2008, the juvenile court entered an order terminating S.A.H.'s parental rights to W.H. pursuant to Iowa Code section 232.116(1)(d) (child CINA for physical or sexual abuse (or neglect), circumstances continue despite receipt of services), (e) (child CINA, child removed for six months, parent has not maintained significant and meaningful contact with the child), and (f) (child four or older, child CINA, removed from home for twelve of last eighteen months, and child cannot be returned home) (2007). The order also terminated S.A.H.'s parental rights to S.H. pursuant to Iowa Code section 232.116(1)(d), (e), and (h) (child is three or younger, child CINA, removed from home for six of last twelve months, and child cannot be returned home).

On September 2, 2008, S.A.H. filed a motion for a new trial pursuant to Iowa Rule of Civil Procedure 1.1004, and a motion to amend and enlarge the juvenile court's termination order pursuant to rule 1.904(2), along with a bill of exceptions. S.A.H. argued that irregularities in the proceedings and accident or surprise due to the flooding left the juvenile court without a reliable record of the testimony at trial, effectively depriving the parties of any legitimate appeal from the court's order. Additionally, S.A.H. asserted, among other things, that the court abused its discretion in allowing into the record hearsay testimony from a Department caseworker concerning the circumstances surrounding the birth of S.H. The court subsequently denied S.A.H.'s post-trial motions. S.A.H. appeals.

Following the filing of S.A.H.'s appeal, the Iowa Supreme Court ordered the parties to provide a statement of the evidence pursuant to Iowa Rule of Appellate Procedure 6.10(3) and to have the record settled or approved by the district court. The juvenile court then received into the record, with no objections, S.A.H.'s statement of evidence, the State's proposed amendment to S.A.H.'s statement of evidence, and the State's exhibit A, which contained copies of documents from the CINA file. The parties stipulated that the statements were accurate summaries of the evidence presented at the time of trial, and that no factual disputes remained for the court to resolve. The juvenile court approved the statements and exhibit to be included in the record on appeal.

II. Discussion.

S.A.H. appeals from the juvenile court order terminating his parental rights to his children. He contends the juvenile court (1) improperly admitted hearsay testimony concerning the circumstances surrounding the birth of one child;

(2) abused its discretion by denying his motions for a new trial and to amend and enlarge the court's termination ruling; and (3) erred in determining clear and convincing evidence established that termination was in the best interests of the children. Upon our de novo review, we affirm the judgment of the juvenile court.

A. Hearsay Testimony.

S.A.H. asserts the juvenile court erred when it admitted the Department caseworker's testimony concerning the circumstances surrounding S.H.'s birth because it contained hearsay and was unfairly prejudicial. Evidentiary rulings and motions are reviewed for an abuse of discretion. *In re E.H.*, 578 N.W.2d 243, 245-46 (Iowa 1998). In general, hearsay is not admissible unless an exception applies. Iowa R. Evid. 5.802. However, the erroneous admission of hearsay evidence will not result in reversal unless it is prejudicial. *Gacke v. Pork Xtra, L.L.C.*, 684 N.W.2d 168, 183 (Iowa 2004).

Even if we assume without deciding the testimony should not have been admitted because it contained hearsay, S.A.H. has not demonstrated he suffered significant prejudice as a result of the admission of this evidence. We note that the juvenile court made no reference to the testimony in its decision. We therefore conclude the trial court did not abuse its discretion in overruling S.A.H.'s hearsay objection to the Department worker's testimony concerning the circumstances surrounding S.H.'s birth. In any event, we give no consideration to the disputed evidence in our de novo review here. *See In re D.L.C.*, 464 N.W.2d 881, 883 (Iowa 1991) (holding that even if the juvenile court commits error, it is unnecessary to return the case to the juvenile court when the error is cured upon our de novo review).

B. Post-trial Motions.

S.A.H. next contends that the juvenile court abused its discretion when it denied his motions for a new trial and to amend and enlarge. He argues that there were irregularities in the proceedings and there was accident or surprise in that the Linn County Courthouse flooded prior to the court entering its termination order, leaving an unreliable record of testimony, thus depriving him of a legitimate appeal. We disagree.

Here, S.A.H. filed a detailed statement of evidence concerning the witnesses' testimony, as provided by the rules of appellate procedure, without any objection. See Iowa R. App. P. 6.10(3). In addition, the State supplemented S.A.H.'s statement and provided the court with copies of the lost original exhibits. Those statements and exhibits create a sufficient record to permit a de novo review of the issues raised by S.A.H. We therefore proceed to an analysis of that record.

C. Best Interests.

Finally, S.A.H. contends the juvenile court erred in determining clear and convincing evidence established that termination was in the best interests of the children. We disagree.

We review termination proceedings de novo. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). The grounds for termination must be supported by clear and convincing evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000). If the juvenile court terminates parental rights on more than one statutory ground, we need only find the evidence supports termination on one of the grounds cited by the juvenile court to affirm. *In re R.K.*, 649 N.W.2d 18, 19 (Iowa Ct. App. 2000).

Our primary concern is the best interests of the children in termination proceedings. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa Ct. App. 1997). Even when the statutory grounds for termination are met, the decision to terminate parental rights must reflect the children's best interests. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). When we consider the children's best interests, we look to their long-range as well as immediate best interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997).

In assessing the children's best interests, we must consider what the future holds for the children if the children are returned to the parent's care. *In re J.K.*, 495 N.W.2d 108, 110 (Iowa 1993). To determine what is in the best interests of the children, evidence of the parent's past performance is the best indicator of the quality of future care for the children. *Id.* (citing *In re M.M.*, 483 N.W.2d 812, 814 (Iowa 1992)).

Here, the children came to the Department's attention in November 2005, after S.H. tested positive for methamphetamine. Since that time, S.A.H. has continued to engage in criminal activities and has failed to put his children's needs first. S.A.H. has been given every opportunity and ample time to provide the children a safe and stable home environment. As detailed above, multiple services were offered to S.A.H. S.A.H. was offered supervised visitation and services, though his visitation with the children was inconsistent in that he would not call if he was unable to make the visitation and would not have items that he needed when he did arrive. S.A.H. stopped taking medications and seeing a therapist for his mental health issues. S.A.H. continued to use drugs despite the

offer and receipt of treatment. These children should not have to wait any longer for their father to become a responsible adult.

It is clear that S.A.H. loves the children and would like to continue his relationship with the children. Furthermore, we do not minimize S.A.H.'s recent progress and the efforts he has made to recover his children. Nevertheless, the evidence does not support the conclusion that additional time would allow the children to be returned to S.A.H.'s care. It is apparent that serious concerns still exist regarding S.A.H.'s stability and his ability to provide adequate care for the children. The children are doing very well with their grandparents, and the grandparents are willing to adopt the children. The children deserve stability and permanency, which S.A.H. has not and cannot provide. See *In re C.D.*, 509 N.W.2d 509, 513 (Iowa Ct. App. 1993). Consequently, we agree with the juvenile court's finding that clear and convincing evidence established that termination of S.A.H.'s parental rights is in the children's best interests and accordingly affirm the juvenile court's decision to terminate S.A.H.'s parental rights.

III. Conclusion.

Because we conclude S.A.H. was not prejudiced by the admission of hearsay testimony, the juvenile court did not abuse its discretion by denying his motions for a new trial and to amend and enlarge the court's termination ruling, and clear and convincing evidence established termination of S.A.H.'s parental rights is in the children's best interests, we affirm the juvenile court's decision to terminate S.A.H.'s parental rights.

AFFIRMED.